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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,227	07/22/2003	Marta I. Rendon	013363-05881	7807
30448 7590 08/16/2007 AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188			EXAMINER CHANNAVAJJALA, LAKSHMI SARADA	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 08/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/624,227

Applicant(s)

RENDON, MARTA I.

Examiner

Lakshmi S. Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of amendment and response dated 6-15-07 is acknowledged.

Claims 1-20 are pending in the instant application.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1-4, 12-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,523,090 to Znaiden and WO 94/15626 (WO).

WO teaches a cosmetic composition comprising Vismia extract, which is used for promoting collagen synthesis, particularly for skin aging or enhancing skin firmness. WO does not a combination of the claimed components of the treatment of hyper pigmentation with Vismia.

Znaiden teaches skin treatment composition for improving skin strength and firmness and reducing signs of cellulite. The composition contains xanthine, inositol phosphoric acid (also known as phytic acid). According to Znaiden the composition provides a treatment for cellulite by improving the appearance of skin by increasing skin strength, firmness and elasticity (col. 5, L 64-67). Thus, both WO and Znaiden teach skin compositions that are effective for skin care such as skin firmness, collagen synthesis etc., in the claimed amounts and therefore combination of the teachings of WO and Znaiden flows logically. Znaiden also suggests adding other skin benefit agents such as moisturizers, skin lighteners etc (col. 6, L 49-62) to the composition containing

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phytic acid. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to combine Vismia (WO) and phytic acid (of Znaiden), both of which are effective for improving skin firmness. One of an ordinary skill in the art would have expected to provide enhanced skin firmness with the combination of phytic acid and Vismia extract.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,523,090 to Znaiden in view of JP 200351722 (JP '722), and WO 94/15626 (WO).

Znaiden teaches skin treatment composition for improving skin strength and firmness and reducing signs of cellulite. The composition contains xanthine, inositol phosphoric acid (also known as phytic acid). According to Znaiden the composition provides a treatment for cellulite by improving the appearance of skin by increasing skin strength, firmness and elasticity (col. 5, L 64-67). Znaiden does not teach Vismia, kojic acid and arbutin and also fail to teach the claimed method of treating hyperpigmentation. However, Znaiden also suggests adding other skin benefit agents such as moisturizers, skin lighteners etc., (col. 6, L 49-62) to the composition containing phytic acid.

JP '722 (abstract only) teaches a skin-lightening and moisturizing composition comprising green algae extracts, melanin formation inhibitors or inflammation inhibitors. Among the melanin formation inhibitors (skin-lightening agents), JP teaches kojic acid and arbutin, both of which are claimed in the instant application.

WO teaches a cosmetic composition comprising Vismia extract, which is used for promoting collagen synthesis, particularly for skin aging or enhancing skin firmness. WO does not a combination of the claimed components of the treatment of hyper pigmentation with Vismia.

It would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to include Vismia of WO and Kojic acid and arbutin of JP in the composition of Znaiden because JP suggests kojic acid and arbutin as skin lightening agents and WO suggests Vismia for skin firmness, collagen synthesis, which also impart smoothness to skin.

According to instant claims Vismia and phytic acid are not required to be effective anti-pigmentation agents and therefore, the combination of Znaiden with JP and WO results in a composition effective in melanin inhibition (skin lightening agents) due to kojic acid, arbutin and effective in skin firming due to phytic acid and Vismia.

Response to Arguments

Applicant's arguments filed 6-15-07 have been fully considered but they are not persuasive.

Applicants argue that the all of the claim limitations have not been met because the independent claims now recite the limitations comprising a mixture of Vismia in an amount effective to lighten skin and phytic acid in an amount effective to lighten skin. It

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is argued that Znaiden teaches using phytic acid for treating cellulite and skin whitening agents such as ferulic acid or kojic acid; WO teaches using Vismia for promoting collagen synthesis, while JP teaches skin lightening cosmetics containing kojic acid and arbutin. It is argued that because the office action states that the combination results in skin lightening due to kojic acid, arbutin and skin firming due to phytic acid and Vismia, the rejection does not provide the teaching of Vismia and phytic acid for the claimed effect and that the combination of the teachings do not provide the reasonable expectation of success, without applicants' disclosure. Applicants' arguments are not persuasive because for the claims directed to a composition, the motivation to optimize the amount of Vismia and phytic acid need not result in the same effect as that of the claimed invention because the claims are directed to a composition and not a method. In addition, for the claimed methods applicants have not shown that the claimed effect is not achieved with the effective amounts taught by the prior art. Therefore, the rejection has been maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.00 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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August 10, 2007


LAKSHMI S. CHANNAVAJJALA
PRIMARY EXAMINER